



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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Wine and Flavor Credits for Distilled Spirits Products

All Distilled Spirits Plant Proprietors, Importers,
Manufacturers of Nonbeverage Products, and Others
Concerned

PURPOSE. This circular is to advise all distilled spirits plant (DSP) proprietors, importers and manufacturers of nonbeverage products that regulations, TD-ATF-297 (90 F.R. 18058), to implement the wine and flavors credit for distilled spirits products, as authorized by 26 U.S.C. 5010, were published in the Federal Register on April 30, 1990, and will become effective on June 1, 1990.

BACKGROUND. In December of 1980, Public Law 96-598 was enacted. Section 6 of the law added § 5010 to the Internal Revenue Code of 1954. This provision restored to wine and flavors the tax status they enjoyed prior to the institution of all-in-bond by authorizing a credit against the excise tax liability paid or determined for the wine and flavors content of distilled spirits. In addition to providing a credit for the wine and flavors content of distilled spirits, section 6 of Public Law 96-598 amended § 5212 of the Internal Revenue Code of 1954 to allow the transfer between the bonded premises of distilled spirits plants of alcohol bottled for industrial purposes. In Industry Circular 81-8, dated March 27, 1981, ATF provided various guidelines and procedures for taking the wine or flavor credits. Regulations in TD-ATF-297 supersede those guidelines with rules establishing less cumbersome procedures. Authorizations to use other procedures for taking the credit, which were approved pending publication of the final rule, will no longer be valid upon the effective date of the final rule.

REQUIREMENTS.

1. Effective tax rates. The final rule establishes a somewhat simplified formula for establishing an effective tax rate in lieu of a credit rate for each proof gallon of distilled spirits containing eligible wine or eligible flavors. The effective tax rate is the net tax rate, after

reduction for any credit allowable for the wine and flavors content, at which the tax imposed on distilled spirits is paid or determined.

2. Application of Effective Tax Rates. Under the suggested procedures in Industry Circular 81-8, the application of the credit rate to taxable removals necessitated the tracing of taxable removals back to the applicable batch records for each product containing wine or flavors. To alleviate the cumbersome paperwork of such tracing, three alternative procedures for application of effective tax rates to taxable removals are provided in the final rule in addition to the general procedure suggested in the Industry Circular.

a. Actual Effective Tax Rate. A proprietor may tax determine spirits at an effective tax rate based on the specific batch of product from which the removal is drawn. To do so, however, requires the ability to trace the product from the record of tax determination back to the batch record. Case serial numbers provide the only means sanctioned by regulations to identify the specific containers and effect the necessary tracing. Therefore it is necessary to record the serial numbers of cases removed on the record of tax determination or other related record.

b. Standard effective tax rate. The rule provides that a standard effective tax rate may be established for any eligible distilled spirits product by computing an effective tax rate based on the least quantity and the lowest alcohol content of wine and flavors used in the manufacture of the product. ATF recognizes that many approved formulas on ATF F 5110.38 cover products in which the quantities, proof, and alcohol content of distilled spirits, wine and flavors vary between specified limits in arriving at the specified proof. In such case, the basis used to establish a standard effective tax rate must be within the range shown on Form 5110.38, but it need not be the least quantity or the lowest alcohol content of wine and flavors permissible on the approved formula. However, in no case may a standard effective tax rate be less than that determined by the least quantity and the lowest alcohol content with which the product will ever be produced.

c. Average Effective Tax Rate. The rule provides that an average effective tax rate may be established for any eligible distilled spirits product by computing an

effective tax rate based on the batches produced during the preceding 6-month period if at least three batches were produced during that period. If this procedure is used for tax determination, a proprietor must also maintain for each product a record showing the average effective tax rate computation. To reflect the wine and flavor content in current inventory accurately, the average effective tax rate computed for each product is adjusted each month so as to include only the immediately preceding 6-month period.

d. Inventory Reserve Account. An inventory reserve account may be established for any eligible distilled spirits product. Under this procedure, each time the product is bottled or packaged, a deposit record is entered into the inventory reserve account of the product. As the product is subsequently removed from inventory, the records in the inventory reserve account are depleted, in chronological order, from the earliest entry date. All removals from inventory, including breakage and inventory losses, are chargeable against the inventory reserve account of the product. The tax rate applied to any taxable removal is determined by the effective tax rate of the record from which the removal is depleted.

e. Transfers in Bond. Distilled spirits plant proprietors who transfer in bond distilled spirits containing wine or flavors are required to record on the transfer record the eligible wine and the eligible flavors content of the distilled spirits so that the consignee proprietor may properly document the effective tax rate.

f. Returns to Bond. To establish the effective tax rate at which tax was paid or determined, claims on distilled spirits containing eligible wine or eligible flavors returned to bond must set out the effective tax rate of each product and identify the applicable record of tax determination. When the date of tax determination cannot be determined, such claims may be based on the lowest effective rate applied to the product.

3. Eligible Wine and Flavors. Credit for the wine and flavor content of distilled spirits is allowable only if the wine or flavor contained in the distilled spirits is an eligible wine or an eligible flavor. An eligible wine is a still wine which has not been subject to distillation at a

distilled spirits plant after receipt in bond. The final rule defines an eligible flavor as one which is of a type eligible for drawback of the tax under 26 U.S.C. 5134, which has not been manufactured at a distilled spirits plant, and which has not been subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

4. Importers. Any person who imports distilled spirits containing wine or flavors on which the tax is to be paid or determined at an effective tax rate must establish the eligibility of the wine and flavor components contained in the product and provide information for verification of the effective tax rate computation. This is accomplished by submitting to ATF a sample of each wine and flavor component to be used in the computation of the effective tax rate. In addition, each time the distilled spirits are imported, a certificate of effective tax rate computation must be filed with the district director of customs at the time of entry liquidation or, for distilled spirits transferred under the provisions of 26 U.S.C. 5232, furnished to the distilled spirits plant proprietor. In lieu of this procedure, the importer may have a standard effective tax rate established for the product or use a standard effective tax rate previously approved for the product. To provide the necessary lead-in time, the final rule delays the effective date of these requirements until December 1, 1990.

5. Distilled Spirits Brought into the United States from Puerto Rico. So that distilled spirits plant proprietors in the United States may properly document the eligible wine and the eligible flavors content of distilled spirits shipped from Puerto Rico to the United States without payment of tax for transfer from customs custody to ATF bond, the shipper shall provide the proprietor with a certificate of effective tax rate computation. Persons in Puerto Rico who ship distilled spirits to the United States on tax determination will be required to maintain a certificate of effective tax rate computation.

6. Distilled Spirits Brought into the United States from the Virgin Islands. Persons bringing distilled spirits containing wine or flavors into the United States from the Virgin Islands shall show the eligible wine and the eligible flavors content of the distilled spirits on the certificate obtained from the manufacturer under current regulations.

7. Manufacturers of Nonbeverage Products. Additionally, the regulations governing nonbeverage drawback are amended to provide for the necessary records and supporting data for claims when drawback is claimed on spirits which have been taxpaid at an effective tax rate less than the rate prescribed by 26 U.S.C. 5001.

8. Transfer of Bottled Distilled Spirits. The regulations governing the transfer of bulk distilled spirits between the bonded premises of distilled spirits plants have been amended to provide for similar transfers of alcohol bottled for industrial purposes.

INQUIRIES. Inquiries concerning this circular should refer to its number and be addressed to the Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.


Director